

**BEFORE THE MINNESOTA
BOARD OF DENTISTRY**

In the Matter of
Michael Gurewitz, D.D.S.
License No. D10324

**STIPULATION AND ORDER FOR
CONDITIONAL LICENSE**

The Minnesota Board of Dentistry ("Board") is authorized pursuant to Minn. Stat. ch. 150A, § 214.10, and § 214.103 to license and regulate dentists, to refer complaints against dentists to the Attorney General for investigation, and to take disciplinary action when appropriate.

The Board received a complaint(s) against Michael Gurewitz, D.D.S. ("Licensee"). The Board's Complaint Committee ("Committee") reviewed the complaint(s) and referred the matter to the Attorney General's Office for investigation. Following the investigation, the Committee held a conference with Licensee on November 7, 2003. The Committee and Licensee have agreed that the matter may now be resolved by this stipulation and order.

Background

On June 12, 1998, the Board adopted a stipulation and order that placed conditions on Licensee's license to practice dentistry in the State of Minnesota. The order addressed the following issues: fraud; auxiliary misuse; inadequate infection control procedures; and improper advertising.

In 1999, the Board received additional complaints against Licensee alleging substandard care and was notified that he had been charged with a felony relating to insurance fraud in the practice of dentistry. After reviewing the criminal charges, allegations, and inspection report, the Board adopted an Amended Stipulation and Order (2000 Amended Order) on September 8,

2000. The 2000 Amended Order addressed the following issues: criminal charges; inadequate infection control procedures; inadequate recordkeeping; and substandard periodontal, diagnostic and operative care. After completing the requirements of the 2000 Amended Order, the Board granted Licensee an unconditional license on December 14, 2001.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between Licensee and the Committee as follows:

A. Jurisdiction. Licensee holds a license to practice dentistry in the State of Minnesota from the Board and is subject to the jurisdiction of the Board with respect to the matters referred to in this stipulation. Licensee states that he does not hold a license to practice dentistry in any other jurisdiction and does not hold any other professional or occupational licenses.

B. Facts. This stipulation is based upon the following facts:

Substandard Endodontic Care / Recordkeeping

1. Licensee failed to adequately document pertinent information and/or provide appropriate endodontic treatment when providing endodontic care to one or more of his patients. Examples include the following:

- a. Licensee failed to perform appropriate diagnostic evaluations/pulp testings on tooth #7 for patient 2 before providing endodontic treatment on March 1, 2002.
- b. In providing endodontic treatment to patients 1, 2, and 3, Licensee failed to properly obturate the canals of the teeth as evidenced on post-operative periapical radiographs, as follows:

1) Obturation of the root canal for patient 1's tooth #13 is overextended as seen on the July 19 and 26, 2002, periapical radiographs. Moreover, tooth #13 may have a second canal that Licensee failed to document and/or provide endodontic treatment.

2) Obturation of the root canal for patient 2's tooth #7 is short as seen on the March 1, 2002, periapical radiograph.

3) Obturation of the root canal for patient 3's tooth #9 is overextended as seen on the September 4, 2002, periapical radiographs.

c. Licensee provided root canal treatment to tooth #3 for patient CT. Specifically, the fill of the mesial root was 3-4 mm short of the apex and required retreatment. Licensee failed to document the inadequate fill in the progress notes and/or document informing the patient of the compromised endodontic treatment or possible post-operative problems.

Substandard Periodontal Treatment

2. Licensee failed to provide adequate periodontal care to patient 5 by failing to obtain periodontal probing measurements to evaluate periodontal status, failing to treat patient 5's periodontal disease and/or refer patient 5 to a periodontist in a timely manner prior to providing prosthodontic treatment.

Additional Substandard Recordkeeping

3. Licensee failed to make or maintain adequate dental records on patients. Examples include the following:

a. Licensee failed to document the patient's informed consent prior to providing endodontic treatment on these dates: patient 1 on March 19, 2002, for tooth #13; patient 2 on March 1, 2002, for tooth #7; and patient 3 on March 22, 2002, for tooth #9.

b. On March 19, 2002, Licensee provided endodontic treatment on tooth #13 for patient 1 without retaining a post-operative periapical radiograph of tooth #13.

c. Licensee failed to document that he had obtained patient 5's informed consent prior to extracting teeth #23, #24 and #26 on April 4, 2002, and placing a partial mandibular denture. Licensee also failed to document in patient 5's progress notes the name of the oral surgeon Licensee referred patient 5 to extract teeth #3-6.

d. Licensee failed to obtain patient 8's informed consent prior to extracting tooth #18 on April 9, 2002, and preparing a bridge for teeth #6 to #10 on April 30, 2002.

C. Violations. Licensee admits that the facts and conduct specified above constitute violations of Minn. Stat. § 150A.08, subd. 1(6) and Minn. R. 3100.6200 A and B and Minn. R. 3100.9600 and are sufficient grounds for the disciplinary action specified below.

D. Disciplinary Action. Licensee and the Committee recommend that the Board issue an order which places CONDITIONS on Licensee's license to practice dentistry in the State of Minnesota as follows:

CONDITIONS

1. Coursework. Licensee shall successfully complete the coursework described below. All coursework must be approved in advance by the Committee. Licensee is responsible for locating, registering for, and paying for all coursework taken pursuant to this stipulation and order. If Licensee attends an undergraduate or graduate dental school course, Licensee must provide each instructor with a copy of this stipulation and order prior to commencing a course. Licensee shall pass all courses with a grade of 70 percent or a letter grade "C" or better. Licensee's signature on this stipulation and order constitutes authorization for the course instructor(s) to provide the Committee with a copy of the final examination and answers

for any course Licensee takes. Licensee's signature also authorizes the Committee to communicate with the instructor(s) before, during, and after Licensee takes the course about Licensee's needs, performance and progress. None of the coursework taken pursuant to this stipulation and order may be used by Licensee to satisfy any of the continuing dental education requirements of Minn. R. 3100.4100, subps. 1 and 2. The coursework is as follows:

a. Endodontic Coursework. Within twelve months of the effective date of this order, Licensee shall complete instruction in endodontics which emphasizes canal preparation, obturation technique and current treatment modalities, including a hands-on component, at the University of Minnesota or an equivalent course.

b. Recordkeeping Coursework. Within twelve months of the effective date of this order, Licensee shall complete a minimum of four hours of one-on-one consultation on recordkeeping.

c. Periodontic Coursework Within twelve months of the effective date of this order, Licensee must complete a minimum of 6 hours of instruction in periodontics, emphasizing periodontal health status and diagnosis.

2. Written Reports and Information. Licensee shall submit or cause to be submitted to the Board the reports and/or information described below. All reports and information are subject to approval by the Committee:

a. Within 30 days of completing any coursework or the consultation taken pursuant to paragraph 1.b. above, Licensee shall submit to the Board (a) a transcript or other documentation verifying that Licensee has successfully completed the course, if the course is a graduate or undergraduate dental school course, (b) a copy of all materials used and/or distributed in the course, and (c) a written report summarizing what Licensee learned in the

course and how Licensee has implemented this knowledge into Licensee's practice. Licensee's report shall be typewritten in Licensee's own words, double-spaced, at least two pages and no more than three pages in length, and shall list references used to prepare the report. The report for the recordkeeping consultation shall include sample recordkeeping forms that Licensee has begun to use in his practice.

b. Records Inspection. Within three months of Licensee's successful completion of all coursework described above, Licensee shall cooperate with an unannounced office visit during normal office hours by a representative of the Board. The representative shall randomly select, remove, and make copies of original patient records, including radiographs, to provide to the Committee for its review of Licensee's record keeping, radiographic technique and patient care.

3. Reimbursement of Costs. Licensee shall pay the Board the sum of \$1500 as partial reimbursement for the Board's costs in this matter. Payment is due when the Licensee petitions the Board to have the conditions removed from his license..

4. Other Conditions.

a. Licensee shall comply with the laws or rules of the Board of Dentistry. Licensee agrees that failure to comply with the Board's laws or rules shall be a violation of this stipulation and order.

b. Licensee shall fully and promptly cooperate with the Board's reasonable requests concerning compliance with this stipulation and order, including requests for explanations, documents, office inspections, and/or appearances at conferences. Minn. R. 3100.6350 shall be applicable to such requests.

c. If the Board receives a complaint alleging additional misconduct or deems it necessary to evaluate Licensee's compliance with this stipulation and order, the Board's authorized representatives shall have the right to inspect Licensee's dental office(s) during normal office hours without prior notification and to select and temporarily remove original patient records for duplication. Licensee shall fully and timely cooperate with such inspections of Licensee's office and patient records.

d. In the event Licensee should leave Minnesota to reside or practice outside the state, Licensee shall notify the Board in writing of the new location within five days. Periods of residency or practice outside of Minnesota will not apply to the reduction of any period of Licensee's discipline in Minnesota unless Licensee demonstrates that practice in another state conforms completely to this stipulation and order.

5. Removal of Conditions. Licensee may petition to have the conditions removed from Licensee's license at any regularly scheduled Board meeting no sooner than one year after the effective date of this order provided that Licensee's petition is received by the Board at least 30 days prior to the Board meeting. Licensee shall have the burden of proving that Licensee has complied with the foregoing and that Licensee is qualified to practice dentistry without conditions. Licensee's compliance with the foregoing requirements shall not create a presumption that the conditions should be removed. Upon consideration of the evidence submitted by Licensee or obtained through Board investigation, the Board may remove, amend, or continue the conditions imposed by this order.

6. Fine for Violation of Order. If information or a report required by this stipulation and order is not submitted to the Board by the due date, or if Licensee otherwise violates this stipulation and order, the Committee may fine Licensee \$100 per late report or other

violation. Licensee shall pay the fine and correct the violation within five days after service on Licensee of a demand for payment and correction. If Licensee fails to do so, the Committee may impose additional fines not to exceed \$500 per violation. The total of all fines may not exceed \$5,000. Licensee waives the right to seek review of the imposition of these fines under the Administrative Procedure Act, by writ of certiorari under Minn. Stat. § 480A.06, by application to the Board, or otherwise. Neither the imposition of fines nor correction of the violation will deprive the Board of the right to impose additional discipline based on the violation.

7. Additional Discipline for Violation of Order. If Licensee violates this stipulation and order, Minn. Stat. ch. 150A, or Minn. R. ch. 3100, the Board may impose additional discipline pursuant to the following procedure:

a. The Committee shall schedule a hearing before the Board. At least ten days prior to the hearing, the Committee shall mail Licensee a notice of the violation alleged by the Committee and of the time and place of the hearing. Within seven days after the notice is mailed, Licensee shall submit a response to the allegations. If Licensee does not submit a timely response to the Board, the allegations may be deemed admitted.

b. At the hearing before the Board, the Committee and Licensee may submit affidavits made on personal knowledge and argument based on the record in support of their positions. The evidentiary record before the Board shall be limited to such affidavits and this stipulation and order. Licensee waives a hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

c. At the hearing, the Board will determine whether to impose additional disciplinary action, including additional conditions or limitations on Licensee's practice, or suspension or revocation of Licensee's license.

8. Other Procedures for Resolution of Alleged Violations. Violation of this stipulation and order shall be considered a violation of Minn. Stat. § 150A.08, subd. 1(13). The Committee shall have the right to attempt to resolve an alleged violation of the stipulation and order through the procedures of Minn. Stat. § 214.103, subd. 6. Nothing herein shall limit (1) the Committee's right to initiate a proceeding against Licensee pursuant to Minn. Stat. ch. 14, or (2) the Committee's and the Board's right to temporarily suspend Licensee pursuant to Minn. Stat. § 150A.08, subd. 8, based on a violation of this stipulation and order or based on conduct of Licensee before or after the date of this stipulation which is not specifically referred to in paragraph B. above.

9. Attendance at Conference. Licensee attended a conference with the Committee on November 7, 2003. The following Committee members attended the conference: Nadene Bunge, D.H., Ronald King, D.D.S., and Freeman Rosenblum, D.D.S. Assistant Attorney General Rosellen Condon represented the Committee at the conference. Licensee is represented by David K. Nightingale in this matter, who has advised Licensee regarding this stipulation and order.

10. Waiver of Licensee's Rights. For the purpose of this stipulation, Licensee waives all procedures and proceedings before the Board to which Licensee may be entitled under the Minnesota and United States constitutions, statutes, or the rules of the Board, including the right to dispute the facts contained in this stipulation and order and to dispute the adequateness of discipline in a contested proceeding pursuant to Minn. Stat. ch. 14. Licensee agrees that upon

the application of the Committee without notice to or an appearance by Licensee, the Board may issue an order imposing the discipline specified herein. The Committee may participate in Board deliberations and voting concerning the stipulation. Licensee waives the right to any judicial review of the order by appeal, writ of certiorari, or otherwise.

11. Board Rejection of Stipulation and Order. In the event the Board in its discretion does not approve this stipulation or a lesser remedy than specified herein, this stipulation and order shall be null and void and shall not be used for any purpose by either party hereto. If this stipulation is not approved and a contested case proceeding is initiated pursuant to Minn. Stat. ch. 14 and section 150A.08, Licensee agrees not to object to the Board's initiation of the proceeding and hearing the case on the basis that the Board has become disqualified due to its review and consideration of this stipulation and the record.

12. Record. This stipulation, related investigative reports and other documents shall constitute the entire record of the proceedings herein upon which the order is based. The investigative reports, other documents, or summaries thereof may be filed with the Board with this stipulation. Any reports or other material related to this matter which are received after the date the Board approves the stipulation and order shall become a part of the record and may be considered by the Board in future aspects of this proceeding.

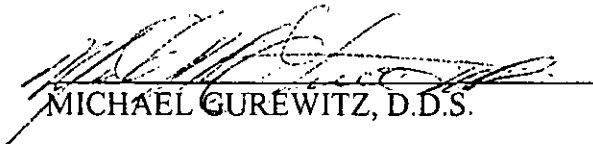
13. Data Classification. Under the Minnesota Data Practices Act, this stipulation and order is classified as public data. Minn. Stat. § 13.41, subd. 5. All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minn. Stat. ch. 13. They shall not, to the extent they are not already public documents, become public merely because they are referenced herein. Pursuant

to federal rule (45 C.F.R. part 60), the Board must report the disciplinary action contained in this stipulation and order to the National Practitioner Data Bank.

14. Entire Agreement. Licensee has read, understood, and agreed to this stipulation and is freely and voluntarily signing it. This stipulation contains the entire agreement between the parties hereto. Licensee is not relying on any other agreement or representations of any kind, verbal or otherwise.

15. Service and Effective Date. If approved by the Board, a copy of this stipulation and order shall be served personally or by first class mail on Licensee's legal counsel. The order shall be effective and deemed issued when it is signed by the President or Vice-President of the Board.

LICENSEE


MICHAEL GUREWITZ, D.D.S.

Dated: 3/5/04

COMPLAINT COMMITTEE

By:


MARSHALL SHRAGG
Executive Director

Dated: 3/9/04

ORDER

Upon consideration of the foregoing stipulation and based upon all the files, records, and proceedings herein,

The terms of the stipulation are approved and adopted, the recommended disciplinary action set forth in the stipulation is hereby issued as an order of this Board placing CONDITIONS on it effective this 26th day of March, 2004.

MINNESOTA BOARD
OF DENTISTRY

By: Linda R. Bergman

AG: #944069-v1